

$$\begin{array}{c} \textbf{X} \\ : \\ : \\ : \\ : \\ : \\ : \\ : \\ : \\ : \\ \textbf{X} \end{array}$$

ORDER

The following are preliminary indicative rulings.

The following exhibits which are videotapes or audio tapes in which either the defendant is heard or seen (sometimes making threats), which contain pictures of his alleged victims, and which were in his possession will be received subject to a proper foundation and the defense objection on grounds of relevance and that the evidence is cumulative is overruled: GX 1712, GX 1830, GX 1901, GX 2103, GX 2105, GX 2109. The following exhibits which on their face are photographs or videos of the work being done in Pinehurst, North Carolina, will be received and the objection on grounds of relevance and that the evidence is cumulative is overruled: GX 1833, GX 1835–1839, GX 1841, GX 1843, GX 1846–1876, GX 2120, GX 2121, GX 2126, GX 2128–GX2132. The only objections to GX 1877–1883, GX 1904, GX 2001, GX 2002, GX 2024, GX 2122, GX 2123, GX 2134–2137, GX 2141–2143, GX 2145–2182, are on foundation grounds and so those exhibits will be received subject to Agent Flatley laying the proper foundation. The objection to GX 2124 and GX 2125 is overruled. The photographs are plainly relevant and not cumulative.

The defense objects to GX 2191 and GX 2192 on hearsay grounds. The Government should be prepared to address whether it is offering the exhibits for the truth of the matter asserted (i.e., that the tasks were performed) or for what is stated (that the individuals involved had the tasks assigned).

Finally, the defense objects to GX 1100–1106 on hearsay grounds. The objection is overruled. Most of the content of these documents constitutes a statement of the declarant's then-existing state of mind. Fed R. Evid. 803(3). Some of the statements are plainly not for the truth—they are “false” confessions. The statements also are admissible under Federal Rule of Evidence 801(d)(2)(e).

The defense also appears to make a blanket objection to the following exhibits, each of which is a photograph extracted from the media located in defendant's residence on grounds of relevance and that they are cumulative:<sup>1</sup> GX1706–1708, GX 1801, GX 1803, GX 1805, GX 1806, GX 1809, GX 1821–1823, GX 1825, GX 1826, GX 1827, GX 2110. The Court is prepared to hear from the Government on the relevance of the photographs as a general matter (without addressing each one specifically) subject, however, to the defense having and articulating tomorrow a particularized objection to any specific photograph. It appears the following set of exhibits also can be addressed as group: GX 1828–1829; GX 1831; GX 1905; GX 2020; GX 2101–2102, and GX 2104; GX 2016; GX 2110; GX 2114.

SO ORDERED.

Dated: March 24, 2022  
New York, New York



LEWIS J. LIMAN  
United States District Judge

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<sup>1</sup> The objection to foundation is overruled on the assumption that Agent Flatley will testify that the exhibits were recovered from media that it is or will be separately established was in defendant's residence.